IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 1213 of 2002()

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CC.1097/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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APPELLANT: COMPLAINANT

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M/S.GEORGE & SONS, 1ST FLOOR,
SULTHAN CHAMBERS, PARAMARA ROAD,
KOCHI-18, REP.BY POWER OF ATTORNEY HOLDER
MR.E.P.KRISHNA KUMAR S/O.PURUSHOTHAMAN,
EDAMNAYIL HOUSE, NADAKAVU PO., UDAYEMPEROOR,
THRIPUNITHURA.

BY ADV. SRI.K.A.SHAMSUDEEN

RESPONDENTS: ACCUSED

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1. M.SHAJAHAN S/O. SULAIKHA BEEVI,
MEERA HOUSE, MUTTACAUDE P.O.,
THIRVANANTHAPURAM.

2. STATE OF KERALA REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J.M. JAMES, J.**

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Criminal Appeal No. 1213 of 2002

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Dated this the 28th February, 2007.

**J U D G M E N T**

The complainant in C.C.No.1097/2000, on the file of the Judicial First Class Magistrate Court-II, Ernakulam, is the appellant. The complaint preferred under Section 138 of the Negotiable Instruments Act, against the first respondent, accused, was dismissed, on the ground that both the complainant, as well as his counsel were absent before the court below, on the appointed day. Hence, this appeal, after obtaining leave of this Court.

2. Counsel appearing for the appellant, complainant, submits that the clerk of the advocate has noted the date of posting wrongly, and, therefore, neither the complainant nor his counsel, could be present before the court below, when the case was taken up, on the appointed date. It is also submitted by the appellant that there are serious contentions and if the impugned order is not set aside, that would affect the interest of the complainant.

3. Though the service is complete in respect of the first respondent, accused, there is no representation. Hence, I heard the learned counsel appearing for the appellant.

4. In the circumstances of this case, and considering the grounds advanced, I set aside the impugned order, dated 30.4.2002, and restore C.C.No.1097/2000, to the file of the Judicial First Class Magistrate Court-II, Ernakulam.

5. The parties shall appear before the court below on 29.3.2007.

6. As the first respondent, accused is not before me, the learned Magistrate shall take coercive steps against him for getting his presence/production before the court below. The learned Magistrate shall dispose of the matter, at the earliest, and in any case, within three months from the date of appearance/production of the accused before the court below.

Criminal Appeal is allowed as above.

**J.M. JAMES,**
**JUDGE**

nj.

**J.M. JAMES, J.**

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Criminal Appeal No. 1213 of 2002

**J U D G M E N T**

Dated: 28th February, 2007.

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